

EXHIBIT 9

Page 38

1 H. Scielzo

2 A. Yes.

3 Q. And there's that footnote 4 next to

4 it?

5 A. Yes.

6 Q. And then under footnote 4 it says

7 with respect to Fiesta Holdings Investments, LLC,

8 "Name change preclosing to ACON Fiesta Holdings,

9 LLC."

10 A. Yes.

11 Q. Is that an accurate statement?

12 A. It is.

13 Q. So it was changed -- I'm sorry. It

14 was changed from ACON Fiesta Holdings, LLC, to

15 Fiesta Holdings Investments, LLC; correct?

16 A. Correct.

17 Q. And then do you see there's a box,

18 it says, "Entities proposed by ACON to be

19 transferred to BLC."

20 A. Yes.

21 Q. What does Newco stand for?

22 A. New company.

23 Q. And what does BLC stand for, please?

24 A. Bodega.

25 Q. Would that be Bodega Latina

Page 40

1 H. Scielzo

2 A. Correct.

3 Q. When you say "not sold," not sold to

4 Bodega Latina Corporation?

5 A. Correct.

6 Q. And this entity on the bottom,

7 Fiesta Mart, LLC, is that the entity that runs the

8 Fiesta Mart stores?

9 MS. CONSOLINO: Objection, form,

10 time frame.

11 MR. KALINER: At the time of the

12 hurricane.

13 THE WITNESS: Yes, I believe so.

14 BY MR. KALINER:

15 Q. What about after the hurricane?

16 A. Yes, until we sold to Bodega, so

17 yes. After it was sold to Bodega, I don't know.

18 Q. Why do you say you don't know after

19 it was sold?

20 A. I'm not sure what Bodega did.

21 Q. And when you say it was sold, does

22 that relate to a MIPA, a membership interest

23 purchase agreement?

24 A. Yes, sir, it does.

25 Q. What exactly is a MIPA in this

Page 39

1 H. Scielzo

2 Corporation?

3 A. It would be.

4 Q. And then is this -- can you tell if

5 this is what happened with the proposed transfer?

6 MS. CONSOLINO: Object to the

7 form.

8 THE WITNESS: Were these the

9 entities that were sold to bodega?

10 BY MR. KALINER:

11 Q. Yes.

12 A. I believe so, but I would need to

13 verify that, but I believe so.

14 Q. When you say "those entities," would

15 it be the three boxes below Fiesta Mart

16 Investments, LLC, Fiesta Mart Holdings, LLC and

17 Fiesta Mart, LLC?

18 A. It would be, yes. Fiesta Holding

19 Investments was not sold to Bodega.

20 Q. Thank you for that clarification.

21 So the company in the middle that's circled

22 is not?

23 A. Right.

24 Q. Fiesta Holdings LLC with the

25 footnote 4 was not sold?

Page 41

1 H. Scielzo

2 instance, when ACON sold certain entities to

3 Bodega?

4 A. Correct. It sold our interest in

5 those entities to Bodega.

6 Q. Is it correct that ACON had no

7 involvement post-MIPA with regard to the Fiesta

8 Mart stores?

9 MS. CONSOLINO: Object to the

10 form.

11 THE WITNESS: In operating our

12 stores, we had no interest, economic or

13 otherwise.

14 BY MR. KALINER:

15 Q. What about with respect to any

16 repairs to those stores after the sale?

17 A. We were not involved in them.

18 Q. And that would include stores 10, 23

19 and 56 in Houston, the Fiesta Mart stores?

20 A. That is correct. We weren't

21 involved in the repairs.

22 BY MR. KALINER:

23 Q. We're going to go ahead and mark the

24 next exhibit. This is the MIPA, and this is under

25 the Bates stamp numbers WTW867 through -1479. It's

<p style="text-align: right;">Page 82</p> <p>1 H. Scielzo</p> <p>2 in the wrong place.</p> <p>3 Q. On the exhibit it's page 18 of 30.</p> <p>4 A. Got it.</p> <p>5 Q. So this is page 2 of the assignment.</p> <p>6 A. I got it, I see it.</p> <p>7 Q. Can you please tell me where these</p> <p>8 numbers came from.</p> <p>9 A. Those were the latest estimates</p> <p>10 provided by Willis.</p> <p>11 Q. And what's your basis for saying</p> <p>12 that?</p> <p>13 A. I believe I was the person who asked</p> <p>14 Willis for the latest numbers.</p> <p>15 Q. And how, if you know, did Willis</p> <p>16 generate these figures that are in this chart on</p> <p>17 page 2?</p> <p>18 A. You would have to ask Willis that.</p> <p>19 Q. Is it correct that with respect to</p> <p>20 this assignment agreement that the insurers on the</p> <p>21 part of the property program at the time of</p> <p>22 Hurricane Harvey were not part of this agreement?</p> <p>23 A. I'm sorry, can you repeat your</p> <p>24 question.</p> <p>25 Q. Sure. With regard to the property</p>	<p style="text-align: right;">Page 83</p> <p>1 H. Scielzo</p> <p>2 insurers that covered the period of Hurricane</p> <p>3 Harvey, is it correct that they are not parties to</p> <p>4 this assignment agreement?</p> <p>5 A. That is correct.</p> <p>6 MR. KALINER: Do you guys want to</p> <p>7 take a quick five-minute break?</p> <p>8 MS. CONSOLINO: I was wondering</p> <p>9 when you were thinking of taking a lunch</p> <p>10 break. We can take a five-minute break</p> <p>11 now.</p> <p>12 MR. KALINER: I'm just asking so I</p> <p>13 can regroup.</p> <p>14 MS. CONSOLINO: Sure.</p> <p>15 MR. KALINER: Thank you.</p> <p>16 (Recess)</p> <p>17 BY MR. KALINER:</p> <p>18 Q. Mr. Scielzo, welcome back from</p> <p>19 lunch. We went ahead and marked the next document</p> <p>20 as Exhibit 13.</p> <p>21 (Exhibit 13, Objections to</p> <p>22 Defendants' Interrogatories, was</p> <p>23 marked for identification.)</p> <p>24 Q. These are ACON Investments' LLC</p> <p>25 objections to Defendants' Interrogatories dated</p>
<p style="text-align: right;">Page 84</p> <p>1 H. Scielzo</p> <p>2 December 30, 2001.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that on the second to</p> <p>6 last page of the document on December 20, 2020, you</p> <p>7 provided a verification to the interrogatory</p> <p>8 responses?</p> <p>9 A. I did.</p> <p>10 Q. And at the time you verified the</p> <p>11 interrogatory responses that you believed the</p> <p>12 information to be in there to be true and accurate?</p> <p>13 A. I did.</p> <p>14 Q. The question on Interrogatory 1,</p> <p>15 this is on page 2 of Exhibit 13, states separately</p> <p>16 the costs actually paid and/or incurred by you</p> <p>17 including by identifying each entity involved in</p> <p>18 performing the work and/or services and the date</p> <p>19 such amounts were incurred to repair the alleged</p> <p>20 Hurricane Harvey damage to each of any or all of</p> <p>21 Fiesta Mart's store numbers 10, 23 and 56,</p> <p>22 buildings, structures and/or contents.</p> <p>23 Do you see where I'm reading from?</p> <p>24 A. I do.</p> <p>25 Q. And then you provided a response on</p>	<p style="text-align: right;">Page 85</p> <p>1 H. Scielzo</p> <p>2 behalf of ACON Investments, LLC?</p> <p>3 A. Yes.</p> <p>4 Q. And after putting forth an</p> <p>5 objection, you stated page 2, "ACON states it has</p> <p>6 not paid or incurred any costs to repair the</p> <p>7 alleged Hurricane Harvey damage to each of any or</p> <p>8 all the Fiesta Mart store numbers, 10, 23 and 56</p> <p>9 building structures and contents."</p> <p>10 Did I read that correctly?</p> <p>11 A. You did.</p> <p>12 Q. In terms of your response, it covers</p> <p>13 what time period?</p> <p>14 A. Going back pre- and post sale. ACON</p> <p>15 did not pay for any repairs and wouldn't have.</p> <p>16 Q. So would it go back to the time of</p> <p>17 Hurricane Harvey in 2017?</p> <p>18 A. That is correct.</p> <p>19 Q. And I understand that this response</p> <p>20 was on behalf of ACON Investments, LLC, but would</p> <p>21 your answer be the same thing on behalf of ACON</p> <p>22 Fiesta Holdings, LLC, the entity that's identified</p> <p>23 in endorsement A-1?</p> <p>24 MS. CONSOLINO: Object to the</p> <p>25 form.</p>

<p style="text-align: right;">Page 86</p> <p>1 H. Scielzo</p> <p>2 Q. So did ACON Fiesta Holdings spend</p> <p>3 any money repairing?</p> <p>4 A. It would not have either. It would</p> <p>5 have been the operating company, if there was any</p> <p>6 money spent.</p> <p>7 Q. Just so the record is clear, ACON</p> <p>8 Fiesta Holdings, LLC, is now known as Fiesta</p> <p>9 Holdings Investments, LLC?</p> <p>10 A. Correct.</p> <p>11 Q. As of today, is the information</p> <p>12 provided in the interrogatory answers still true</p> <p>13 and accurate?</p> <p>14 A. It is.</p> <p>15 Q. Let's go ahead and mark the next</p> <p>16 document. This is going to be Exhibit 14.</p> <p>17 (Exhibit 14, Document</p> <p>18 Bates-stamped ACON 11425 through</p> <p>19 -11460, was marked for</p> <p>20 identification.)</p> <p>21 Q. This is under ACON 11425 through</p> <p>22 ACON 11460. It's a cover email from a Singh Harman</p> <p>23 dated September 15, 2007, to certain individuals</p> <p>24 including Mr. Scielzo, and the attachments, the</p> <p>25 board call September 15 of 2017.</p>	<p style="text-align: right;">Page 87</p> <p>1 H. Scielzo</p> <p>2 A. I have it.</p> <p>3 MR. WEISS: Just for the record,</p> <p>4 this was produced as two separate</p> <p>5 documents by ACON, but because the</p> <p>6 information provided in the load files or</p> <p>7 whatever indicated this was an attachment,</p> <p>8 we just combined it into a single PDF.</p> <p>9 THE WITNESS: I understand.</p> <p>10 BY MR. KALINER:</p> <p>11 Q. Why is Fiesta providing this</p> <p>12 information to ACON, this Fiesta board call?</p> <p>13 MS. CONSOLINO: Objection, form.</p> <p>14 THE WITNESS: Yes. This was an</p> <p>15 update from the Fiesta management team to</p> <p>16 the board on a variety of topics.</p> <p>17 BY MR. KALINER:</p> <p>18 Q. In your individual capacity, do you</p> <p>19 see that your email is in this on the first page?</p> <p>20 A. Yes.</p> <p>21 Q. Why were you copied in this? Why</p> <p>22 was it being addressed to you?</p> <p>23 A. Even though I wasn't on the board, I</p> <p>24 participated in observing board meetings.</p> <p>25 Q. When you say the board meetings, it</p>
<p style="text-align: right;">Page 88</p> <p>1 H. Scielzo</p> <p>2 was the Fiesta Mart board?</p> <p>3 A. It would have been, yeah. Fiesta</p> <p>4 Mart board, correct.</p> <p>5 Q. On the first page, this is ACON</p> <p>6 11425, it states in part, "Furthermore, the store</p> <p>7 56 remodel, which was part of the year 1 remodel</p> <p>8 plan without recovering the insurance costs plan</p> <p>9 related to Hurricane Harvey."</p> <p>10 Do you see where I'm reading from?</p> <p>11 A. I do.</p> <p>12 Q. Can you expand on that at all?</p> <p>13 A. The management team had a program to</p> <p>14 remodel certain stores. This is prior to Hurricane</p> <p>15 Harvey. And in here they're indicating store 56</p> <p>16 was one of those stores, but obviously it would no</p> <p>17 longer be in the remodel program since it was</p> <p>18 damaged and instead would have to be handled</p> <p>19 through the insurance recovery.</p> <p>20 Q. Was that referred to as the Capex</p> <p>21 for remodeling the stores?</p> <p>22 A. Yes.</p> <p>23 Q. What does Capex stand for?</p> <p>24 A. Capital expenditures.</p> <p>25 Q. Let's turn to ACON 11431, I'm</p>	<p style="text-align: right;">Page 89</p> <p>1 H. Scielzo</p> <p>2 actually on the Fiesta Mart LLC board call dated</p> <p>3 September 15, 2017. And this is slide 4.</p> <p>4 MR. WEISS: Page 7 of 36.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. KALINER:</p> <p>7 Q. It states in part, "23 out of 34</p> <p>8 stores were open in Houston the day after the</p> <p>9 hurricane. Thirty-one stores out of 34 were open</p> <p>10 within 48 hours."</p> <p>11 Do you see where I'm reading from?</p> <p>12 A. I do.</p> <p>13 Q. Do you know where that information</p> <p>14 came from?</p> <p>15 A. This was a presentation from the</p> <p>16 Fiesta management team, so it came from them.</p> <p>17 Q. Is everything -- was all information</p> <p>18 on this page from the Fiesta management team?</p> <p>19 A. It was, yes.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that the information on this page from the Fiesta</p> <p>22 management team is not accurate?</p> <p>23 A. I do not.</p> <p>24 Q. Can you expand at all with regard to</p> <p>25 store 10 relocation options?</p>

<p style="text-align: right;">Page 126</p> <p>1 H. Scielzo</p> <p>2 Did you agree that Mr. Peterson and the</p> <p>3 Fiesta team were diligent in their work?</p> <p>4 A. I know they were working on the</p> <p>5 claim, yes.</p> <p>6 Q. Did you think that they were being</p> <p>7 less than diligent as they worked on the insurance</p> <p>8 claim?</p> <p>9 A. I did not, no.</p> <p>10 Q. You can put that exhibit aside.</p> <p>11 Sir, I want to turn back to the first proof</p> <p>12 of loss and the first payments issued in the wake</p> <p>13 of Hurricane Harvey under the insurance policies.</p> <p>14 You testified earlier today that in response to the</p> <p>15 first proof of loss you directed payment to Fiesta.</p> <p>16 Do you remember that testimony?</p> <p>17 A. I do, yes.</p> <p>18 Q. Do you recall which Fiesta entity</p> <p>19 you directed payments to?</p> <p>20 A. I do not. I don't remember. What I</p> <p>21 did is I verbally told Jeff Roberts from Willis</p> <p>22 that the payments could be directed to Fiesta and</p> <p>23 let Wayne -- and to Wayne Peterson. Figure out</p> <p>24 where it goes.</p> <p>25 Q. And were you directing the payments</p>	<p style="text-align: right;">Page 127</p> <p>1 H. Scielzo</p> <p>2 to the operating company?</p> <p>3 MS. CONSOLINO: Objection to form.</p> <p>4 THE WITNESS: Yes. I believe --</p> <p>5 and I directed it to that Wayne could</p> <p>6 direct the funds to where he wanted. And</p> <p>7 I assume as operating company they would</p> <p>8 give specific directions on exactly which</p> <p>9 entity to give it to.</p> <p>10 BY MS. LeROY:</p> <p>11 Q. Sitting here today, are you aware of</p> <p>12 which specific Fiesta company the checks were made</p> <p>13 out to by carriers in payment on those, on the</p> <p>14 first proof of loss?</p> <p>15 A. I do not.</p> <p>16 MS. LeROY: I'm going to try to</p> <p>17 upload an exhibit. So if everyone can</p> <p>18 bear with me while I try to do this</p> <p>19 mechanically I will, hopefully, be able to</p> <p>20 do this quickly.</p> <p>21 MR. WEISS: If it becomes an</p> <p>22 issue, just email it to me.</p> <p>23 MS. LeROY: I'm going to rename</p> <p>24 it. We're on Exhibit 18 now, aren't we?</p> <p>25 MR. WEISS: No, we've gone through</p>
<p style="text-align: right;">Page 128</p> <p>1 H. Scielzo</p> <p>2 21. So you can do 22.</p> <p>3 MS. LeROY: You said Exhibit 22?</p> <p>4 MR. WEISS: Yes.</p> <p>5 MS. CONSOLINO: Thank you.</p> <p>6 MS. LeROY: I just uploaded it so</p> <p>7 you all should see it in a minute. When</p> <p>8 it comes it's an email Bates stamped</p> <p>9 Fiesta Mart 3095 through -97. Let me know</p> <p>10 when you all --</p> <p>11 (Exhibit 22, Document</p> <p>12 Bates-stamped Fiesta Mart 3095</p> <p>13 through -97, was marked for</p> <p>14 identification.)</p> <p>15 BY MS. LeROY:</p> <p>16 Q. Feel free to read the whole string,</p> <p>17 but I'm going to direct your attention to the last</p> <p>18 string that shows up at the top of page 1 of</p> <p>19 Exhibit 22. Is this email as shown on Exhibit 22</p> <p>20 an email that you received on or around</p> <p>21 September 27, 2018?</p> <p>22 A. It is.</p> <p>23 Q. And is this something that you</p> <p>24 received in the course of your ordinary work for</p> <p>25 ACON?</p>	<p style="text-align: right;">Page 129</p> <p>1 H. Scielzo</p> <p>2 A. It is.</p> <p>3 Q. Does this appear to be an exact copy</p> <p>4 of the email string?</p> <p>5 A. It is.</p> <p>6 Q. So at the top of the first page,</p> <p>7 Mr. Roberts is writing to you and copying two</p> <p>8 gentlemen from Willis. And he says, "Drew, because</p> <p>9 Fiesta Mart is an insured under the policy and</p> <p>10 received the prior proceeds on this claim, WTW is</p> <p>11 obligated to provide pertinent information to</p> <p>12 Fiesta Mart/El Super."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you disagree that Fiesta was an</p> <p>16 insured under the policy?</p> <p>17 A. Yes.</p> <p>18 MS. CONSOLINO: Objection.</p> <p>19 Q. Do you think Willis was wrong about</p> <p>20 that?</p> <p>21 A. I do, yes.</p> <p>22 Q. Do you disagree that Fiesta Mart</p> <p>23 received the prior proceeds on the claim?</p> <p>24 A. I'm not sure who received that. I</p> <p>25 don't know where exactly they went.</p>